

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
Williamsport Division

COLUMBIA GAS TRANSMISSION,
LLC,

Plaintiff,

v.

1.01 ACRES, MORE OR LESS IN
PENN TOWNSHIP, YORK COUNTY,
PENNSYLVANIA, et al.,

Defendants.

Civil Action # 4:13-CV-00778-MWB

**PLAINTIFF COLUMBIA GAS TRANSMISSION, LLC'S BRIEF IN
OPPOSITION TO DEFENDANTS DWAYNE AND ANN BROWN'S
SUPPLEMENTAL BRIEF FOLLOWING ORAL ARGUMENT**

Plaintiff Columbia Gas Transmission, LLC (“Columbia”), by counsel, submits this Brief in Opposition to the Supplemental Brief Following Oral Argument (“Brief”) filed by Dwayne and Ann Brown (“Landowners”).

INTRODUCTION

On October 10, 2013, this Court heard oral argument on the parties' respective motions for partial summary judgment. Following the hearing, the Landowners submitted the Brief which further reflects the Landowners' misunderstanding of the applicable legal principles. Specifically, the Landowners continue to allege that Columbia may not proceed under 18 C.F.R. § 2.55 because

its construction will take place in a new right-of-way, even though Columbia has repeatedly indicated that it is replacing Line 1655 pursuant to blanket authority under 18 C.F.R. § 157.208.

ARGUMENT

A. Columbia Is Authorized To Replace Line 1655 In A New Right-Of-Way Pursuant To The Blanket Certificate And 18 C.F.R. § 157.208.

The Landowners argue that because Columbia is replacing Line 1655, it may not do so because the replacement will not occur “within the existing right-of-way” as provided in Section 2.55(b)(1)(ii). Br. at 4. Contrary to the Landowners’ argument, Columbia is not proceeding under Section 2.55 and has cited Section 157.208 as its authority for replacing Line 1655 in a new right-of-way.

Section 157.208 specifically authorizes a holder of a blanket certificate “to make miscellaneous rearrangements . . . or acquire, construct, *replace*, or operate any eligible facility.” 18 C.F.R. § 157.208(a) (emphasis added). Section 157.202 defines “eligible facility” as, *inter alia*, “main line, lateral, and compressor replacements that do not qualify under § 2.55(b) of this chapter because . . . they will not satisfy the location or work space requirements of § 2.55(b).” 18 C.F.R. § 157.202(b)(2)(i) (emphasis added).

Here, replacement of Line 1655 is a replacement and not a “miscellaneous rearrangement” as the Landowners continue to allege for reasons unknown. Further, this replacement *does not* satisfy the location or work space requirements

of Section 2.55(b) because the replacement will be located in a new right-of-way. Consequently, the replacement falls squarely within the definition of “eligible facility” under Section 157.202 and is subject to blanket authorization as provided in Section 157.208(a).

The FERC Guidelines attached to the Brief prove exactly this. Subsection C, titled “Blanket Certificate – Subpart F of Part 157” specifically states that an “eligible facility” includes replacement that “doesn’t qualify under section 2.55 because of . . . the need *to move the facility or use new workspace.*” ECF Doc. No. 38-1 at 4 (emphasis added). This definition precisely describes Columbia’s replacement of Line 1655.

Further, subsection A of the Guidelines, titled “Operation and Maintenance of Certificated Projects,” provides that one of the requirements of Section 2.55 is that “the replaced pipe goes in the same permanent right-of-way.” *Id.* at 1. The Guidelines go on to say that “If [the conditions of Section 2.55] can’t be met, *then the authorization conferred by the blanket certificate may be able to be used.*” *Id.* at 2 (emphasis added). This is a clear indication that when, as here, a pipeline must be replaced in a new right-of-way, blanket authorization under Section 157.208 may be utilized¹. That is exactly what Columbia is attempting to do in this case. The Landowners’ conclusory allegation that “The request for eminent domain

¹ Because Columbia is relying on Section 157.208, and not Section 2.55, the Landowners’ reliance on 64 Fed. Reg. 26572 (1999) is misplaced.

authority, following strict construction, is not found in the asserted authority at § 157.208" is unsupported and should be rejected. Br. at 4.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in Columbia's Motions for Partial Summary Judgment and Immediate Possession, the Court should grant Columbia's Motions, deny the Landowners' Motion for Partial Summary Judgment, and award Columbia any other relief this Court deems just and proper.

Dated: October 18, 2013

Respectfully submitted,

**COLUMBIA GAS TRANSMISSION,
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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of October, 2013 a true copy of the foregoing Plaintiff Columbia Gas Transmission, LLC's Brief in Opposition to Defendants Dwayne and Ann Brown's Supplemental Brief Following Oral Argument was filed electronically and thereby served on:

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